

REMARKS

In order to expedite allowance of this application, the previous independent claim has been divided into two independent claims, one being a combination of previous claims 30 and 31 but eliminating the modified starch as a polysaccharide hydrocolloid, and one corresponding to previous claim 30 but specifying that the soft caramel base mass comprises polydextrose. The dependent claims have been adjusted to take this division into consideration.

The claimed invention addresses the technical problem of providing soft caramels in which the gelatin normally present is replaced by a non-animal substance that has properties such as low elasticity, high water dispersibility, good bodying and texturing properties, good mouthfeel and no characteristic flavor. This has been accomplished by combining a soft caramel base which contains at least one polysaccharide hydrocolloid as texturing agent, crystalline isomaltulose and a noncrystalline sweetener phase which in one case is maltitol syrup, polydextrose, hydrogenated starch hydrolysate or a mixture thereof and in another case is polydextrose. A particular feature of this soft caramel is that the crystalline sweetener phase is isomaltulose, i.e., the only crystalline sweetener present is isomaltulose. Non-crystalline high intensity sweeteners can be present and the composition is sucrose-free.

It has been surprisingly established that in these combinations, the selected polysaccharide hydrocolloid has properties that enable the complete replacement of gelatin as texturing agent in soft caramels while retaining the special texture and

consistency of the soft caramels. Moreover, the temperature stability of crystalline isomaltulose can be insufficient. See, e.g., "Coloration and Other Chemical Changes in the Manufacture of Palatinose Candy", and "Application for the Approval of Isomaltulose", both of record, which show that crystalline isomaltulose is heat-sensitive, shown by discoloration, at temperatures over 100°C, such as used in preparation of the instant product (Example 1), and especially over 120°C used in the examples of Barrett reference. Surprisingly, the temperature stability of crystalline isomaltulose is considerably improved by stabilizing effect of the polysaccharide hydrocolloids in the claimed combination. These aspects of the invention are unexpected and unpredictable.

In light of the changes to the claims, it is respectfully submitted that the prior rejections based on 35 USC § 103 over Barrett in view of Koji, and as to some dependent claims also Willibald-Ettle are moot, and should not be repeated.

Barrett discloses a chewy confectionary product in which some or all of the gelatin has been replaced by oxidized starch and which contains sugar or a sugar substitute, or both. Among the substituted sugars mentioned is Isomalt, which is a mixture of alcohols resulting from the hydrogenation of isomaltulose but there is no teaching or suggestion of the use of isomaltulose, which is a single compound, namely the disaccharide 6-O- α -D-glucopyranosyl-D-fructose. The Office has acknowledged this deficiency exists. Note also that all of the examples in Barrett employ a single sweetener which is either sucrose or crystalline sucrose while the claims of the present application specifically exclude the possible presence of sucrose.

Barrett does not recognize the need to simultaneously provide a crystalline sweetener phase and a non-crystalline sweetener phase in a gelatin-free soft caramel. At column 3, lines 31-37 and at column 4, lines 39-54, Barrett teaches the use of syrup and/or sugar. The person skilled in the art would thus learn from Barrett that the chewy confectionary product provided needs to comprise a non-crystalline, a semi-crystalline or a crystalline material such as crystallized or non-crystallized sucrose (see column 3, lines 31-35) but would not learn that a very specific crystalline sweetener which is isomaltulose must be present, and that the isomaltulose should be the only crystalline sweetener present in the caramel. The skilled person would also not learn that a non-crystalline sweetener phase must be present and be maltitol syrup, polydextrose or hydrogenated starch hydrolyzate.

Koji teaches that crystalline palatinose exists but states on page 5 that when an attempt was made to use palatinose alone instead of sucrose and starch syrup while eliminating wheat flour, significant problems resulted. Koji found that by forming a caramel paste and adding palatinose microcrystals at a temperature at which they did not melt could address those problems when the composition contains palatinose, other non-sucrose sugars, milk protein and lipids (page 7). Like Barrett, Koji does not teach or suggest using a non-crystalline sweetener phase which is maltitol syrup, polydextrose or hydrogenated starch hydrolyzate or a combination thereof, in combination with a crystalline phase which is isomaltulose together with a polysaccharide hydrocolloid to produce a gelatin-free soft caramel, nor that such a combination would produce the advantages realized in the present invention.

The Examiner will note that Koji teaches the combination of powdered palatinose with a palatinose syrup and this is in contrast to the present invention which contains a non-crystalline phase of maltitol syrup, polydextrose or hydrogenated starch hydrolyzate. The combination of such a non-crystalline phase in combination with a crystalline sweetener which is only isomaltulose is a particular feature of the present invention. As pointed out in the paragraph bridging pages 2 and 3 of the present application, the non-crystalline phase in the soft caramel mass serves to inhibit the crystallization of components and to stabilize the moisture and also has a crucial role in the formation of body and strength and viscosity of the soft caramel mass and effects the chewability of the composition. There is nothing in Koji, or Barrett, which suggests that a non-crystalline sweetener phase which is not palatinose but instead is polydextrose, hydrogenated starch hydrolyzate or maltitol syrup in combination with a crystalline sweetener phase which is isomaltulose only, in combination with a polysaccharide hydrocolloid provides a soft caramel, which is gelatin-free and still has a very attractive texture and chewability, as well storage capability.

With particular reference to claim 30 as amended above, the Examiner will note that Barrett is predicated on substituting oxidizing starch for some or preferably all of the gelatin in a chewy confection (col. 2, lines 52-55; col. 4, lines 4-8). Oxidizing starch is a modified starch obtained as described at col. 4, line 9 et seq. In this manner, the disadvantages associated with the gelatin is overcome while retaining the gelatin texture (col. 2, lines 52-55). The oxidizing starch is thus essential, and would necessarily be present in any modification of Barrett, such as for instance by Koji. Eliminating the modified starch of Barrett is contraindicated by the teachings of this reference. The hydrocolloids of claim 30 do not include a modified starch. Accordingly, no rejection

based on Barrett could be applicable to claim 30 (or the claims dependent thereon) as it would impermissibly destroy the invention on which Barrett is based.

With particular reference to new independent claim 62, the Koji reference teaches that palatinose can be used in combination with sucrose or, preferably, low-tooth decay sugars such as isomaltulose syrup, reduced malt sugar, sorbitol, coupling sugar, fructo-oligosaccharides, reduced isomaltulose in the non-crystalline phase. See pages 6, 11 and 13. These short chain saccharides provide the confectionary product with good bodying and texturing properties when isomaltulose is present in the crystalline phase. There is no teaching or suggestion that a long chain polysaccharide such as polydextrose can be used or that it might possibly provide similar properties. Barrett likewise fails to teach or suggest the use of polydextrose for any purpose. Instead, Barrett suggests the use of materials such as hydrocolloids, maltodextrins, etc. for modifying the texture, flavor and appearance of the product.

It is respectfully submitted that no possible combination of Barrett and Koji would achieve the claimed invention or suggest how to do so to one of ordinary skill in the art.

The Willibald-Ettle reference was cited only to show some feature of dependent claims. It was not assert to, nor in fact does it, cure any of the basic deficiencies in the combination of Barrett and Koji.

In light of all of the foregoing, it is respectfully submitted that this application

is now in condition to be allowed and the early issuance of a Notice of Allowance is respectfully solicited.

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